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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
 )  
Revision of Part 22 and Part 90 )  
of the Commission's Rules to )  
Facilitate Future Development )  
of Paging Systems )  
 )  
Implementation of Section 309(j) )  
of the Communications Act -- )  
Competitive Bidding )

WT Docket No. 93-18

PP Docket No. 93-253

To: The Commission

**PETITION FOR RECONSIDERATION**

Paging Network, Inc. ("PageNet"), by its attorneys and pursuant to 47 C.F.R. § 1.429, hereby petitions the Commission to reconsider certain aspects of the *First Report And Order*, 61 FR 21380 (1996) ("Order") in the above-captioned proceeding.<sup>1</sup> In support of this Petition, the following is respectfully shown:

**I. INTRODUCTION**

In the *Order*, the Commission described the contribution the paging industry makes to the dynamism of the U.S. economy. It affirmed the highly competitive nature of the paging marketplace and that paging is not a static industry. As a result, it

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<sup>1</sup> The *Order* was published in the Federal Register on May 10, 1996.

recognized the need to reshape the current freeze on paging applications and crafted a highly beneficial interim licensing scheme to meet the needs of subscribers, enable carriers to continue to address those needs, and maintain the vibrant contribution of the paging industry to the national economy.

Specifically, the Order partially lifted the interim freeze on paging applications to allow incumbent licensees to add new primary sites within 40 miles of operational same-channel facilities. In addition, it clarified that incumbents may add fill-in sites and modify internal sites so long as the composite interference contour of the existing system, as defined by Section 22.537(e), is not extended.

PageNet supported both these moves in its comments in this proceeding<sup>2</sup> and wholeheartedly supports them now, but it believes that they stop short of fully addressing the needs of the paging industry during the interim period prior to commencement of operations under a geographic licensing scheme. Therefore it urges the Commission, to reconsider the decisions reached in the Order and to supplement the steps just taken by providing for licensing of additional same-channel sites on a secondary, at-risk basis beyond 40 miles. It asks, in addition, that the

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<sup>2</sup> See Interim Comments of Paging Network, Inc., March 1, 1996, at 5-9, 12-14; Comments of Paging Network, Inc., March 18, 1996, at 45-47.

Commission reconsider allowing unfettered MXing of 40-mile extension applications and instead restrict such filings to incumbent licensees with co-channel facilities operating within 40 miles. Only with these changes, PageNet submits, can licensing during the interim period achieve the Commission's goals of enabling carriers to serve the needs of their customers while deterring application fraud.

## **II. DISCUSSION**

### **A. Competing Applicants and Application Fraud**

The *Order* repeatedly references the Commission's concern about "telecommunications investment fraud associated with paging licenses," the "proliferation of paging application fraud," and what the FTC in its comments called "a plague of fraud" by application mills. See, *Order* at ¶¶ 16, 17. In not lifting the freeze *in toto*, the Commission in the *Order* states that to do so would "inadvertently encourage a resumption of fraudulent activity by application mills seeking to induce unsophisticated investors into filing applications." *Order* at ¶ 19.

However, in its decision to allow unrestricted competing applications against initial filings in the 40-mile fringe area, the Commission has, PageNet believes, opened wide the door for the very kind of mill activity that it has sought to eliminate by the freeze. Allowing non-incumbents to submit competing

applications, in fact, invites an even more egregiously insidious form of fraud by application mills in that the investor's money in this instance will be spent on an application which in the Commission's own words has not a prayer of being granted, since the Commission "will treat both applications as mutually exclusive and will hold them in abeyance until the conclusion of this proceeding." Order. at ¶ 26. In effect, this 'come one, come all' approach is an open invitation to mills and speculators to file applications that are mutually exclusive with incumbents' initial applications, without regard to the fact that those applications will not be acted upon. It serves only to give new life to mill activity, which it is the Commission's goal to eliminate, at the expense of "reasonable" incremental expansion by established incumbents, which the Order otherwise endorses.

This approach should therefore be abandoned in favor of allowing only incumbent licensees having operating facilities within 40 miles of their own proposed site to submit a competing application. Only applicants so situated, *i.e.*, those with an immediately adjacent co-channel system, could have any legitimate interest in the frequency within the context of this proceeding. Moreover, mutually exclusive applicants should have the option of devising engineering solutions to their conflict, so that service is not denied to customers in the area where the two systems abut.

## **B. Secondary Licensing**

Secondary licensing of expansion sites by incumbent licensees is essential for carriers, such as PageNet, to meet subscriber demand and thereby serve the public interest while preserving currently unserved areas for auction. Secondary licensing is a natural corollary to the 40-mile application provision adopted in the *Order*. Without it, the 40-mile footprint of the industry will be definitively frozen at its current location, plus 20 miles. This necessary incremental extension alone cannot meet the needs of carriers through the perhaps many months ahead until systems become operational under the Commission's proposed market area licensing scheme. During this potentially extended period, tens of thousands of additional paging customers nationwide will exert a demand for paging service to which carriers must respond. Where incumbents are able to provide that service on an at-risk basis, they must be permitted to do so in order to satisfy the subscriber demand, enhance existing service and maintain competitive positions *vis à vis* service providers not subject to the current freeze.<sup>3</sup>

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<sup>3</sup> The only entities eligible to submit secondary site applications would be incumbents with an operating same-channel facility within the geographic or market-area as defined at paragraph 34 of the *Notice of Proposed Rule Making* in this proceeding.

PageNet perceives no detriment that would result from secondary licensing of additional sites. At the auction table, the additional sites become transparent as to the carrier's system in the given market. After the auction, the secondary operations of an unsuccessful bidder would be unprotected. Without protection these sites represent nothing of value that the secondary licensee could use as leverage as against the winning bidder. In short, secondary licensing preserves currently unserved areas for auction without handicapping public access to high quality, reliable service.

Without secondary licensing, carriers will be unable for perhaps many more months to modify their systems to meet subscriber demand in new areas beyond the 40-mile fringe of their existing service contours. In non-fringe areas, secondary licensing is an essential antidote to otherwise inevitable stagnation. It will help insure the continued economic health of this highly competitive industry but will phase out naturally with the implementation of market area licensing. When the auctions commence, any applications pending beyond the 40-mile fringe would be dismissed unless filed by an entity participating in the auction for that frequency in that geographic area. Any applications pending after the close of the auction would be dismissed unless filed by the successful bidder for the license on that frequency in that market. Upon grant of a market-area license, all of the secondary sites authorized to the geographic

licensee would be part of the geographic system and enjoy primary status and all pending applications for secondary sites could be dismissed as moot.

Already the freeze has interrupted the build-out and enhancement of vital communications systems and service. Throughout the coming months, carriers must be allowed to modify their systems to meet subscriber demand. To mitigate the impact of the further period required to complete rulemaking, conduct the auction (a process that may itself entail several months) and complete the petition to deny process following the auction, the Commission must, in addition to the primary licensing it has adopted in the *Order*, extend secondary licensing throughout the auction and, for the winning bidder, up until the moment when the permanent authorizations are granted.

### **III. CONCLUSION**

The Commission's decision to proceed during this interim period with limited primary licensing of additional sites within 40 miles of existing paging operations is a major benefit. To avoid undermining the improved service potential thus endorsed by the *Order* and to avoid causing a resurgence of investment fraud by application mills, it must limit competitive applicants to those who have their own operating systems in adjacent areas and a legitimate need to preserve their own service potential. In addition, the Commission should take the further step of

authorizing secondary licensing of sites beyond the 40-mile fringe areas for the reasons and in the manner set forth in this petition and in PageNet's earlier Comments and Interim Comments in this proceeding.

Respectfully submitted,

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